

**Bayou Manor Health Center, Inc. and 1115 Nursing Home, Hospital and Service Employees Union—Florida H.E.R.E., AFL–CIO, affiliated with 1115 District Council, Hotel Employees and Restaurant Employees, AFL–CIO, Petitioner.**  
Case 12–RC–7506

May 28, 1993

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

On June 10, 1992, the Regional Director for Region 12 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found that the Employer's licensed practical nurses (LPNs) were not statutory supervisors within the meaning of Section 2(11) of the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. By Order dated July 17, 1992, the Board granted the Employer's request for review solely with respect to the Regional Director's finding that evaluations prepared by the Employer's LPNs do not affect raises and/or bonuses received by the Employer's certified nursing assistants (CNAs), and, thus, do not establish supervisory authority. The election was conducted as scheduled on July 16, 1992, and the ballots were impounded.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon careful consideration of the entire record and the undisputed findings of the Regional Director on this issue, as well as the Employer's brief on review, the Board concludes, contrary to the Regional Director, that the Employer's LPNs are statutory supervisors within the meaning of Section 2(11) of the Act. In so concluding, the Board finds that LPNs exercise independent judgment in completing evaluations of the CNAs on an annual basis, and that these evaluations are relied upon by the Employer to award specific

merit increases, as well as occasional departmental bonuses.<sup>1</sup>

The LPNs, using evaluation forms which include 16 items covering work performance and personal characteristics,<sup>2</sup> assign numerical scores from 1 to 10 to each item. Thereafter, an overall average score is computed. There is no review of the numerical scores awarded by LPNs. After the evaluation is shown to the individual CNA, it is placed in the employee's personnel file. The Employer's administrator determines the maximum increase that is available for the nursing department within the annual budget, and allocates specific percentage increases corresponding to the various average scores. In the 3 years preceding the hearing in this case, the maximum percentage increase was 5 percent and the minimum was zero. The scores that the CNAs received on their evaluations directly determined the amount of the merit increase they received within this range. Further, the last time a departmental bonus was authorized, the administrator relied upon CNAs' annual evaluation scores to determine the amounts each CNA would receive.

Thus, we find that the evaluations completed by the LPNs affect the CNAs' salaries, as there is a direct correlation between the evaluations and the merit increases or occasional departmental bonuses awarded. It therefore follows that the Employer's LPNs, except those working as medication and treatment LPNs, are statutory supervisors within the meaning of Section 2(11) of the Act. See *Health Care & Retirement Corp.*, 310 NLRB 1002 (1993).

Accordingly, the Regional Director's decision is reversed, the Direction of Election is vacated, and the case is remanded to the Regional Director for further appropriate action consistent with the findings herein.

<sup>1</sup> The Employer's "medication and treatment" LPNs are excepted from this finding, as the record establishes that they do not complete evaluations of CNAs. As the LPNs' role in the evaluations of CNAs, and the effect of those evaluations on raises and/or bonuses received was the only ground on which review was granted, we agree with the Regional Director that "medication and treatment" LPNs are *not* statutory supervisors.

<sup>2</sup> Examples of work performance categories include: specific procedures, routine care, and nursing station tasks. Examples of categories under personal characteristics include: relationships, communication skills, appearance, and responsiveness to supervision.